

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES ROSS, JR.,

Petitioner,

v.

FDC SEATAC WARDEN,

Respondent.

CASE NO. 2:21-cv-00925-MJP-JRC

REPORT AND RECOMMENDATION

NOTED FOR: October 22, 2021

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creatura. This Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner filed the petition pursuant to 28 U.S.C. § 2241.

Because petitioner brought this action without paying the \$5 filing fee or filing a motion for leave to proceed *in forma pauperis* ("IFP"), this Court ordered him to do so by September 24, 2021. Likewise, because petitioner deficiently pleaded his petition, this Court ordered him to file an amended petition by September 29, 2021. However, to date, petitioner has not complied with

1 these orders. So this case should be dismissed without prejudice for failure to prosecute and  
 2 failure to comply with court orders.

### 3 **BACKGROUND AND DISCUSSION**

4 On July 9, 2021, petitioner filed his petition. Dkt. 1. Petitioner did not pay the \$5 filing  
 5 fee or file an IFP motion. So the Clerk issued a notice of deficiency that instructed petitioner to  
 6 pay the filing fee or submit an IFP motion by August 12, 2021. Dkt. 2. Petitioner did not correct  
 7 this deficiency by the August 12, 2021 deadline. Therefore, on August 25, 2021, this Court  
 8 issued an order directing petitioner to pay the filing fee or file an IFP motion by September 24,  
 9 2021. Dkt. 3. This Court cautioned petitioner that, if he failed to comply with this order, it would  
 10 recommend dismissal of this case. *Id.* at 2. Furthermore, on August 30, 2021, because petitioner  
 11 deficiently pleaded the petition, this Court ordered him to file an amended petition by September  
 12 29, 2021. Dkt. 4. This Court cautioned petitioner that, if he did not file an amended petition by  
 13 this date, the case would be dismissed. *Id.* at 5.

14 To date, petitioner has not paid the \$5 filing fee or filed a motion to proceed IFP or  
 15 amended petition. Furthermore, petitioner has not filed a motion for extension of time or  
 16 otherwise attempted to justify his failure to file comply with the orders at issue. Accordingly, this  
 17 case should be dismissed for failure to prosecute and failure to comply with court orders.

### 18 ***IN FORMA PAUPERIS* (“IFP”) STATUS ON APPEAL**

19 Petitioner should not be granted IFP status for purposes of an appeal of this matter. IFP  
 20 status on appeal shall not be granted if the district court certifies “before or after the notice of  
 21 appeal is filed” “that the appeal is not taken in good faith[.]” *See* Fed. R. App. P. 24(a)(3)(A).  
 22 “The good faith requirement is satisfied if the petitioner seeks review of any issue that is not  
 23 frivolous.” *Gardner v. Pogue*, 558 F.2d 548, 551 (9th Cir. 1977) (citation and internal quotation  
 24

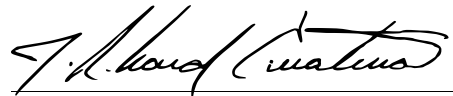
marks omitted). Generally, an issue is not frivolous if it has an “arguable basis either in law or in facts.” *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Because any appeal from this matter would be frivolous, IFP status should not be granted for purposes of appeal.

#### CONCLUSION

As discussed above, it is recommended that this case be DISMISSED WITHOUT PREJUDICE for failure to prosecute and failure to comply with court orders. It is further recommended that this case be CLOSED.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can result in a waiver of those objections for purposes of appeal. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **October 22, 2021** as noted in the caption.

Dated this 4th day of October, 2021.



J. Richard Creatura  
Chief United States Magistrate Judge